

## Message Text

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ACTION EB-11

INFO OCT-01 EUR-25 ISO-00 CAB-09 CIAE-00 COME-00 DODE-00

INR-10 NSAE-00 RSC-01 FAA-00 L-03 DRC-01 /061 W

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FM AMEMBASSY ROME

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E.O. 11652: N/A

TAGS: ETRN, IT

SUBJECT: CIVAIR - SEABOARD CARGO RATES

REF: (A) STATE 226170; (B) LAASE/PARR AND LAASE/SILBERSTEIN  
TELECONS OF NOVEMBER 16

1. SUMMARY. GOI REFUSED U.S. PROPOSAL DESCRIBED REFTEL. GOI  
LEGAL POSITION NOW IS THAT CIVILAVIA'S SEP 19 MESSAGE CONSTITUTES  
NOTICE UNDER ARTICLE 10(E) OF U.S.-ITALY AIR TRANSPORT AGREEMENT  
(ATA) AND THAT EFFECTIVE NOV 19 GOI IS FREE UNDER ARTICLE 10(E)  
TO ACT UNILATERALLY TO REVOKE 15 AND 30 TONS RATES, CIVILAVIA  
HAS NOTIFIED SEABOARD IN MILAN THAT 15 AND 30 TON RATES NO LONGER  
EFFECTIVE AFTER NOV 19. GOI DID AGREE THAT HENCEFORTH ALL  
COMMUNICATIONS REGARDING U.S.-ITALY ATA WOULD BE THROUGH MINISTRY  
FOREIGN AFFAIRS (MFA). GOI INTENDS TO PUBLISH MINISTERIAL DECREE  
IN OFFICIAL GAZETTE SETTING FORTH PROCEDURES TO BE FOLLOWED WHEN  
FILING RATES WITH CIVILAVIA. END SUMMARY.

2. ON NOV 16 EMBOFF WAS REQUESTED TO CAL AT MFA AT 7:00 PM TO DISCUSS  
SEABOARD CARGO RATES CASE. DURING THIS TELEPHONE CONVERSATION MFA  
REP LA MORTE DISCLOSED CONTENTS OF LETTER MFA HAD RECEIVED PREVIOUS  
DAY FROM CIVILVIA SETTING FORTH LATTER'S "FINAL" LEGAL POSITION, I.E.,

SEPT 19 MESSAGE FROM CIVILAVIA CONSTITUTES NOTICE OF DISSATISFACTION  
UNDER ARTICLE 10 (E) OF ATA AND EFFECTIVE NOV 19 CIVILAVIA COULD,  
UNDER PROVISIONS ARTICLE 10 (C), TAKE NECESSARY STEPS TO PREVENT  
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CONTINUATION OF SEABOARD'S 15 AND 30 TONS RATES.

3. AT 7:00 PM MFA MEETING GOI WAS REPRESENTED BY: MFA - PUCCIONI (CHIEF, AVIATION AFFAIRS) AND LA MORTE; CIVILAVIA - LIOI (ACTING DIRECTOR, INT'L AVIATION AFFAIRS), SITIDOLO (CHIEF, RATES DIVISION), AND DI GREGORIA; ALITALIA - FILIPPE AND PIRRO FROM AIR CARGO DIVISION.

4. AS FIRST ORDER OF BUSINESS, GOI REPS AGREED THAT HENCEFORTH ALL COMMUNICATIONS FROM CIVILAVIA RELATING TO MATTERS COVERED IN ATA (E.G., RATES AND SCHEDULES) WOULD BE TRANSMITTED TO EMBASSY THROUGH MFA. (MFA INDICATED IT VERY UPSET AT CIVILAVIA'S DIRECT COMMUNICATIONS

WITH EMBASSY IN THIS CASE AND IT WOULD NO LONGER TOLERATE SUCH BEHAVIOR BY CIVILAVIA.)

5. IN ORDER PREVENT FUTURE IRREGULAR FILINGS, CIVILAVIA STATED ITS INTENTION TO PUBLISH MINISTERIAL DECREE IN OFFICIAL GAZETTE SETTING FORTH PROCEDURES FOR FILING RATES WITH CIVILAVIA. EMBOFF SAID THIS INTERNAL GOI MATTER BUT NOTED THAT LACK OF SUCH PROCEDURES WAS IN LARGE PART RESPONSIBLE FOR PRESENT SITUATION.

6. EMBOFF THEN PRESENTED U.S. PROPOSAL DESCRIBED REFTTEL. AFTER SEVERAL QUESTIONS RE PROTECTION OF ALITALIA INTERESTS DURING PERIOD BEFORE CONSULTATIONS IN JANUARY, ITALIAN DELEGATION LEFT CONFERENCE ROOM TO DISCUSS OFFER. AFTER TWENTY (20) MINUTES HEATED DISCUSSION, DELEGATION RETURNED AND PUCCIONI ANNOUNCED U.S. OFFER HAD BEEN REJECTED BECAUSE ALITALIA CERTAIN LOW RATES WOULD HARM ITS COMMERCIAL INTERESTS. EMBOFF REPEATED PREVIOUS ARGUMENT THAT NO CARGO HAD YET MOVED AT 15/30 TON RATES AND THEREFORE ALITALIA COULD NOT CLAIM IT HAD BEEN HARMED TO DATE; MOREOVER, U.S. PROPOSAL FULLY PROTECTED ALITALIA DURING INTERIM. ALITALIA REPS, OBVIOUSLY UNDER FIRM INSTRUCTION, REFUSED TO DISCUSS THIS ASPECT FURTHER.

7. PUCCIONI THEN PRESENTED GOI LEGAL POSITION (SEE PARA 2 ABOVE), WHICH IS BASIS FOR REFUSAL U.S. PROPOSAL. GOI SEES NO NEED TO ACCEPT U.S. PROPOSAL WHEN IT ALREADY, IN ITS VIEW, ENTITLED TAKE UNILATERAL ACTION EFFECTIVE NOV 19 UNDER PROVISIONS ARTICLE 10 (G) OF ATA TO REVOKE SEABOARDS, 15 AND 30 TON RATES. EMBOFF REPLIED THAT USG CANNOT AGREE THAT CIVILAVIA'S SEPT 19 MESSAGE MEETS THE REQUIREMENTS OF ARTICLE 10(E); IT WAS NOT A CLEAR EXPRESSION OF DISSATISFACTION; LIMITED OFFICIAL USE

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IT WAS NEITHER DELIVERED THROUGH DIPLOMATIC CHANNELS NOR ADDRESSED TO THE EMBASSY; AND IT CONTAINED NO REQUEST FOR CONSULTATIONS. LIOI NOTED THAT ARTICLE 10 (E) DOES NOT REQUIRE ANY FORMAL REQUEST FOR CONSULTATIONS. HE MADE IT CLEAR THAT, WHILE USG COULD CHALLENGE GOI'S LEGAL POSITION, CIVILAVIA HAD ALREADY NOTIFIED SEABOARD THAT 15/30 TON RATES ARE TO BE WITHDRAWN EFFECTIVE NOV 19 AND THAT CIVILAVIA

WOULD ACT IF SEABOARD DID NOT COMPLY. SEABOARD RATES WOULD THEN

REVERT TO THOSE WHICH IT APPLIED BEFORE OCTOBER 17, 1973 RATHER THAN RATES NOW APPLIED BY ALITALIA. (ONLY 15:30 TON RATES ARE IN DISPUTE, NOT SEABOARD'S GENERAL RATE).

8. CIVILAVIA TELEGRAM 327332/32.1 OF NOV 15 TO SEABOARD STATES: QTE. FURTHER TO OUR TELEGRAM NO. 322369/32.1 SENT TO YOUR COMPANY ON SEPT 19, 1973, THIS MINISTRY, APPLYING TO EXPIRATION TIME ENVISAGED BY ARTICLE 10 OF THE U.S.-ITALY AIR TRANSPORT AGREEMENT, WARNS YOUR COMPANY AGAINST THE USE AFTER NOVEMBER 19, 1973 OF THE CARGO RATES PRESENTED IN YOUR LETTER OF AUGUST 27, 1973, CONFIRMING ONCE AGAIN OUR FIRM INTENTION, OTHERWISE, TO APPLY FULLY THE MEASURES ENVISAGED IN PARAGRAPH G OF ARTICLE 10 OF THE AIR TRANSPORT AGREEMENT. UNQTE.

9. IN RESPONSE TO EMBOFF'S QUERY, CIVILAVIA REPS STATED THEY WOULD HAVE NO RPT NO BASIS FOR REJECTING AS SEABOARD REQUEST FOR IATA-APPROVED 30 TONS RATES EFFECTIVE JANUARY 1, 1974.

10. EMBOFF CLOSED DISCUSSION BY NOTING THAT GOI REJECTION OF REASONABLE U.S. OFFER WHICH FULLY PROTECTED ALITALIA INTERESTS WAS NOT CONDUCIVE TO THE PROMOTION OF HARMONIOUS U.S.-ITALY BILATERAL CIVIL AVIATION RELATIONS.

1. IN SUBSEQUENT CONVERSATION INITIATED BY FILIPPE, HE SAID SITUATION IN ITALY NOT COMPARABLE TO THAT IN GERMANY, FRANCE, BELGIUM,

NETHERLANDS, ETC. ONCE LUFTHANSA PUT 747 INTO ALL-CARGO SERVICE, A PREFERENTIAL WEIGHT RATE WAS NECESSARY TO SECURE SUFFICIENT CARGO. ONCE GERMANY APPROVED SUCH A RATE, NEIGHBORING COUNTRIES FORCED TO DO LIKEWISE TO REMAIN COMPETITIVE AND AVOID LOSS OF CARGO TO LUFTHANSA OR SEABOARD OPERATING FROM GERMANY. BEING ON OTHER SIDE OF ALPS, AND THUS A SEPARATE MARKET. ALITALIA DOES NOT FEAR DIVERSION OF CARGO BY TRUCK TO NORTHERN EUROPE. FILIPPE LIMITED OFFICIAL USE

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VEHEMENTLY MADE POINT THAT PRIMARY BENEFICIARY OF HIGH-WEIGHT-BREAK RATES ARE FREIGHT AGENTS, WHO CONSOLIDATE SHIPMENTS TO TAKE ADVANTAGE OF LOWER RATES, WHILE CARRIERS SUFFER DILUTION OF REVENUE.

12. COMMENT. EMBASSY SEES NO RPT NO HOPE OF SHIFTING ALITALIA POSITION (AND THEREFORE CIVILAVIA OF MFA). ALTHOUGH BOTH MFA AND CIVILAVIA APPARENTLY WILLING ACCEPT U.S. PROPOSAL, ALITALIA'S ADAMANT REFUSAL EFFECTIVELY SETTLE MATTER. WHILE UNHAPPY OVER IATA-APPROVED 30 TON RATE, THERE IS NO LEGAL BASIS ON WHICH ALITALIA CAN ARGUE FOR REJECTION OF SUCH A RATE AFTER JANUARY 1, 1974. HENCE CIVILAVIA WILLING APPROVE A REQUEST FOR THIS RATE BUT NOT A LESSER 30 TON RATE OF 15 TON RATE NOT SANCTIONED BY IATA. THIS BEING THE CASE, EMBASSY SEES LITTLE POINT IN U.S. REQUESTING CARGO RATE CONSULTATIONS UNTIL SUCH TIME AS IT OBVIOUS LOWER RATES IN OTHER MARKETS ARE ADVERSELY AFFECTING ALITALIA LIFTINGS

FROM ITALY, EVEN THOUGH GOI HAS INDICATED TO EMBASSY IT WILLING HOLD SUCH CONSULTATIONS IN TANDEM WITH JANUARY "EX-POST" SUMMER SEASON CAPACITY CONSULTATIONS IF USG SO REQUESTS.

13. DESPITE VARYING LEGAL VIEWS OF USG AND GOI RE INTERPRETATION OF ARTICLE 10 OF ATA, ONLY OPERATIONAL QUESTION IS WHETHER SEABOARD COULD APPLY 15/30 TON RATES UNTIL SOME TIME IN JANUARY. DEPARTMENT SHOULD CAREFULLY CONSIDER WHETHER ADMITTEDLY SMALL LIFTINGS THAT MIGHT

OCCUR AT 15/30 TONS RATES IN INTERIM PERIOD ARE WORTH LONG-TERM DAMAGE

TO SEABOARD INTERESTS OR OVERALL DETERIORATION IN U.S.-ITALY CIVIL AVIATION RELATIONS, WHICH WOULD BE LIKELY CONSEQUENCE OF USG CONTINUING PRESS ITS LEGAL CASE. PROCEDURAL CHANGES NOTED ABOVE BY GOI MAKE IT HIGHLY UNLIKELY THAT FUTURE DISPUTES OF THIS NATURE WILL ARISE.

14. EMBASSY RECOMMENDS CLOSING CASE THROUGH NOTE (IN REPLY TO NOTE CONFIRMING GOI LEGAL POSITION DESCRIBED ABOVE, WHICH MFA NOW PREPARING) FULLY EXPLAINING USG LEGAL POSITION BUT NOTING THAT NEW GOI PROCEDURES WILL FORECLOSE FUTURE SUCH DISPUTES. SEABOARD SHOULD IN THIS CASE FILE FOR IATA-APPROVED 30 TON RATE EFFECTIVE JANUARY 1, 1974.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AIR CARGO, AIR FARES, AVIATION AGREEMENTS, AIR SCHEDULES, MEETING DELEGATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 17 NOV 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** golinofr  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:**  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** (A) STATE 226170; (B) LAASE/PARR AND  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** golinofr  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 17 SEP 2001  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <17-Sep-2001 by kelleyw0>; APPROVED <06 MAR 2002 by golinofr>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** CIVAIR - SEABOARD CARGO RATES  
**TAGS:** ETRN, IT, US, (PUCCION)  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005